

REMARKS/ARGUMENTS

Claims 6-29 and 47-52 are pending in the application. Claims 9-21 and 24-26 have been withdrawn. Claims 1-5 and 30-46 have been canceled. Claims 50-52 are new. No new matter has been introduced. The amendment to claim 6 is supported by page 6, starting at line 24 to page 7, ending at line 4 as well as figure 4 and its related description.

Rejections under 35 U.S.C. §112

The Examiner has rejected claim 29 under 35 U.S.C 112, second paragraph. Specifically, the Examiner states that “the first porous region” in line 2 of the claim lacks antecedent basis. Applicant’s amendment cures the rejection; removal of the rejection is respectfully requested.

Rejections under 35 U.S.C. §102(b)

The Examiner has rejected claims 6, 22, and 23 under 35 U.S.C. §102(b) as being anticipated by Cremascoli, United States Patent 4,813,959 (“Cremascoli”). As best understood by the applicant, the examiner is basing the rejection on the acetabulum or socket device illustrated in Figure 1. If the applicant is correct, the examiner has cleverly denoted annular body 3 as the claimed device body with the reverse “L” shaped left side as the attachment region having an indentation. Accordingly, the examiner has reasoned that since ceramic inserts 5 and 6 are attached to device 3, claims 6, 22 and 23 are anticipated.

Claim 6 has been amended to recite, “the second porous region is positioned in between the first porous region and the attachment region such that the first porous region and attachment region are located on opposite sides of the second porous region.” As best illustrated in Figure 1 of Cremascoli, insert 5 is not located between reference numbers 3 and 6 such that 3 and 6 are on opposite sides of 5. Accordingly, claim 6 is patentable over Cremascoli. Claims 22 and 23 depend from claim 6 and are patentably allowable for at least the same reason.

Rejections under 35 U.S.C. §102(e)

The Examiner has rejected claims 6 - 8, 22, 23, 27, 29, and 47 - 49 under 35 U.S.C. §102(e) as being anticipated by Gayer et al., United States Patent 6,461,385 (“Gayer”). Applicants respectfully traverse. Grayer teaches wire 400 coated with oxide layer 402

(applicants concede that Grayer wire 400 can be substituted with a device 100 having indentations 106 as illustrated in Figure 1 (*see*, col. 9, lines 44-47)). Over the oxide layer 402 is disposed a hydroxypatite layer 404, followed by a polymer layer 406. The ceramic or hydroxypatite layer 404 does not include two different porosities as claimed, and more specifically, Gayer certainly does not teach that the lesser of the two porosities is attached or fused on indentations 106. Gayer does not teach that polymer layer 406 is ceramic and there is no suggestion whatsoever to substituted a second, additionally ceramic layer for polymer layer 406. Accordingly, claims 6 and 27 are patentable allowable over Gayer. Claims 7, 8, 22, 23, 29 and 47-49 are the dependent claims and are allowable for at least the same reason.

Rejections under 35 U.S.C. §103(a)

The Examiner has rejected claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over Cremascoli in view of Alt, United States Patent 6,099,561 ("Alt"). As indicated above, claim 6 is patentably allowable over Cremascoli. Alt does not cure the deficiencies of Cremascoli with respect to claim 6. Accordingly, claim 6 is patentably allowable over the combination of the references. Claims 7 and 8 depend from claim 6 and are allowable for at least the same reasons.

The Examiner has rejected claim 28 under 35 U.S.C. § 103(a) as being unpatentable over Gayer in view of Ding, United States Patent Application Publication 2002/91433 ("Ding") or Yan, United States Patent 6,240,616 ("Yan"). As indicated above, claim 27 is patentable allowable over Grayer. Ding or Yan do not cure the deficiencies of Gayer with respect to claim 27. Accordingly, claim 27 is patentably allowable over the combination of the three references. Claim 28 depends from claim 27 and is allowable for at least the same reasons.

Removal of all rejections is respectfully requested.

As applicant respectfully submits that the pending claims are in condition for allowance, Applicant requests rejoinder of withdrawn claims 9 - 21, and 24 - 26. MPEP § 821.04 recites the following:

The propriety of a restriction requirement should be reconsidered when all the claims directed to the elected invention are in condition for allowance, and the nonelected invention(s) should be considered for rejoinder. Rejoinder involves

withdrawal of a restriction requirement between an allowable elected invention and a nonelected invention and examination of the formerly nonelected invention on the merits.

In order to be eligible for rejoinder, a claim to a nonelected invention must depend from or otherwise require all the limitations of an allowable claim.

Claims 9 - 21 and 24 - 26 depend from, directly or indirectly, claim 6. Therefore, with respect to withdrawn claims 9 - 21 and 24 - 26, Applicant respectfully requests that the Examiner rejoin these claims and subsequently examine these claims on the merits. Specifically, Applicant requests that the Examiner rejoin the above mentioned claims, and to examine all pending claims from Group I with respect to unelected species B – H from the September 19, 2005 election requirement, and unelected species A, C, and D from the May 31, 2006 election requirement.

CONCLUSION

In light of the foregoing claim amendments and remarks, this application is considered to be in condition for allowance


If necessary to ensure a timely response, this paper should be considered as a petition for an Extension of Time sufficient to provide a timely response. The undersigned authorizes the examiner to charge any fees that may be required, or credit of any overpayment to be made, to **Deposit Account No. 07-1850.**

Should the Examiner have any questions regarding this communication, the Examiner is invited to contact the undersigned at the telephone number shown below.

Respectfully submitted,

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